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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 RANDALL LAWRENCE and
11 MICHAEL McCONNELL,

12 Plaintiffs,

13 vs.

14 UNITED STATES DEPARTMENT
15 OF THE TREASURY; UNITED
STATES BUREAU OF THE MINT;
and the UNITED STATES OF
AMERICA,

16 Defendants.

CASE NO. 14cv594-WQH-NLS
ORDER

17 HAYES, Judge:

18 The matter before the Court is the Motion to Dismiss First Amended Complaint,
19 filed by Defendants United States Department of the Treasury, United States Bureau of
the Mint, and the United States of America. (ECF No. 19).

20 **I. Background**

21 On March 14, 2014, Plaintiffs Randall Lawrence and Michael McConnell
22 initiated this action by filing a Complaint for Declaratory Judgment. (ECF No. 1).
23 Plaintiffs sought a declaratory judgment that Plaintiffs are the legal owners of a unique
24 United States coin, a 1974-D Aluminum Cent, and that “the Government’s legal claim
25 to Plaintiffs’ aluminum cent is invalid.” *Id.* at 18. On June 3, 2014, Defendants United
26 States Department of the Treasury, United States Bureau of the Mint, and the United
27 States of America filed a motion to dismiss the Complaint. (ECF No. 3). On July 23,
28 2014, this Court granted Defendants’ motion on the grounds that the Complaint failed

1 to allege sufficient facts to support the legal conclusion that Plaintiffs are the “owners”
 2 of the Aluminum Cent, with a “legal right to have their coin sold at public auction,” and
 3 that “the Government’s claim to Plaintiffs’ Aluminum Cent is invalid.” (ECF No. 10
 4 at 5).

5 On December 12, 2014, Plaintiffs filed the First Amended Complaint (“FAC”).
 6 (ECF No. 17). On December 24, 2014, Defendants filed the Motion to Dismiss First
 7 Amended Complaint. (ECF No. 19). On January 19, 2015, Plaintiffs filed an opposition.
 8 (ECF No. 20). On January 26, 2015, Defendants filed a reply. (ECF No. 21).

9 **II. Allegations of the FAC**

10 Plaintiffs are “the owners of a unique United States coin, a 1974-D Aluminum
 11 Cent.” (ECF No. 17 at 1). Over one million 1974 aluminum cents were struck by the
 12 U.S. Mint in 1973 and 1974. At least dozens of these coins were handed out by the
 13 United States Mint to various members and staff of the House and Senate Banking
 14 Committees in 1974 while attempting to persuade Congress to replace copper pennies
 15 with aluminum cents. The coins struck in Denver were intermingled with those
 16 manufactured in Philadelphia once they reached Washington, and were distributed in
 17 a similar manner. Although the U.S. Mint has claimed that no records exist indicating
 18 that any aluminum cents were authorized to be struck at the U.S. Mint’s Denver facility,
 19 “the Denver Mint could not have made aluminum cents without a specific order to do
 20 so.” *Id.* ¶ 39.

21 Congress ultimately decided not to adopt aluminum cents. The U.S. Mint melted
 22 down most of the specimens that were still at the Philadelphia Mint facility and
 23 collected a majority of those that had been distributed in Washington, D.C., to also be
 24 destroyed. “While it is rumored that only a dozen or so Aluminum Cents were minted
 25 at the Denver Mint, only Plaintiff’s specimen is known to exist at this time.” *Id.* ¶ 9.

26 Plaintiff LAWRENCE is the son of the late Harry Edmond
 27 Lawrence, who served with distinction for approximately 20 years in the
 28 Denver Mint facility, predominantly in the assistant superintendent’s
 position, retiring as assistant superintendent in 1980. Harry Lawrence was
 seconded to Washington, [D.C.] during 1974, and on information and
 belief he participated in the various hearings and meetings with

1 Congressmen, Senators and their staff relating to the 1974 aluminum cent
 2

3 The Denver Mint commemorated Harry Lawrence's impending
 4 retirement in 1979 by (a) giving him a clock engraved with his name and
 5 dates of service and with the "hours" represented by specimens of each of
 the last 90%-silver coins minted in Denver in 1964, and (b) allowing him
 to keep certain error coins struck in Denver which he had accumulated,
 and one specimen of the 1974-D aluminum cent.

6 Harry Lawrence died in 1980, and Plaintiff LAWRENCE obtained
 7 the clock, the error coins, and the 1974-D aluminum cent that is the
 8 subject of this action along with his father's other personal property. In
 2013, LAWRENCE conveyed an interest in the 1974-D aluminum cent to
 Plaintiff McCONNELL.

9 *Id.* ¶¶ 34-36.

10 On February 26, 2014, the Chief Counsel for the U.S. Mint sent Plaintiffs a letter
 11 demanding the return of any aluminum cent in Plaintiff's possession or control.¹ The
 12 letter stated that any aluminum cent remains property of the federal government because
 13 Congress never issued an aluminum cent as legal tender. A similar letter was sent to
 14 the auction house engaged by Plaintiffs to sell the coin.

15 The FAC alleges a single count for declaratory judgment. The FAC alleges:
 16 Plaintiffs are entitled to a declaratory judgment that they have a superior
 17 claim of title to the aluminum cent, based on the following:

18 (a) the Government's having given the coin to Harry Lawrence in
 19 1979, and the presumption of title provided thereby by California
 Evidence Code 632 (A thing delivered by one to another is presumed to
 have belonged to the latter);

20 (b) Plaintiff LAWRENCE's undisturbed control of the coin for the
 21 past 34 years, combined with the presumption of title provided thereby by
 California Evidence Code 637 (The things which a person possesses are
 presumed to be owned by him);

22 (c) Plaintiff LAWRENCE's undisturbed control of the coin for the
 23 past 34 years, combined with the presumption of title provided thereby by
 California Evidence Code 638 (A person who exercises acts of ownership
 24 over property is presumed to be the owner of it); [and]

25 (d) the Government's recognition of the ownership rights of the

27 ¹ Defendants request that the Court take judicial notice of the letters sent from the
 28 Chief Counsel of the U.S. Mint to Plaintiffs and the auction company. The Court has
 not relied on the letters and makes no ruling on Defendants' request for judicial notice.

1 current possessors of every other coin struck by the U.S. Mint since
2 1792...

3 *Id.* ¶ 65.

4 **III. Contentions of Parties**

5 Defendants contend that Plaintiffs have not asserted—and cannot assert—facts that
6 would support any scenario under which Plaintiffs could plausibly be in lawful
7 possession of the subject piece. Defendants contend that Plaintiffs’ possession of
8 United States property is insufficient to divest the United States of its ownership
9 interest, and that it does not matter whether or not “the ‘Denver Mint’ allowed him to
10 ‘keep’ what he had already taken.” (ECF No. 19 at 1). Defendants contend that “no
11 authorization exists—and none is alleged—whereby any Government official could have
12 lawfully allowed Mr. Lawrence to obtain or keep the subject piece that he possessed
13 through advantage of his federal employment with the United States Mint.” *Id.* at 1-2.

14 Plaintiffs contend that their allegation that U.S. Government officials knew of,
15 and approved, Harry Lawrence’s taking the Aluminum Cent and other coins with him
16 at retirement, explains how Harry Lawrence lawfully came into possession of the
17 Aluminum Cent. Plaintiffs contend that “the circumstances under which Harry
18 Lawrence received the Aluminum Cent . . . with all reasonable inferences drawn from
19 them, satisfy Plaintiffs’ sole pleading requirement, namely a plausible basis for their
20 claim of title to the coin.” (ECF No. 20 at 2).

21 **II. Standard of Review**

22 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state
23 a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of
24 Civil Procedure 8(a) provides that “[a] pleading that states a claim for relief must
25 contain ... a short and plain statement of the claim showing that the pleader is entitled
26 to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where
27 the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable
28 legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

1 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
 2 requires more than labels and conclusions, and a formulaic recitation of the elements
 3 of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
 4 (quoting Fed. R. Civ. P. 8(a)). “To survive a motion to dismiss, a complaint must
 5 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is
 6 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*,
 7 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
 8 content that allows the court to draw the reasonable inference that the defendant is liable
 9 for the misconduct alleged.” *Id.* (citation omitted). “[T]he tenet that a court must
 10 accept as true all of the allegations contained in a complaint is inapplicable to legal
 11 conclusions. Threadbare recitals of the elements of a cause of action, supported by
 12 mere conclusory statements, do not suffice.” *Id.* (citation omitted). “When there are
 13 well-pleaded factual allegations, a court should assume their veracity and then
 14 determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679.

15 **III. Ruling of the Court**

16 It is unlawful for any person without proper authority to remove property from
 17 the United States Mint. *See* 31 C.F.R. § 91.4 (1974). “Congress has the power to
 18 provide for the disposition of property of the United States, and the power must be
 19 exercised by the authorized authority, and in the authorized manner.” *Kern Copters Inc.*
 20 *v. Allied Helicopter Service, Inc.*, 277 F.2d 308, 313 (9th Cir. 1960) (citations omitted).

21 The FAC alleges that the “Denver Mint” commemorated Harry Lawrence’s
 22 retirement by “allowing him to keep certain error coins struck in Denver which he had
 23 accumulated, and one specimen of the 1974-D aluminum cent.” (ECF No. 17 at ¶ 35).
 24 The FAC alleges that the aluminum cent passed to Plaintiff Lawrence upon Harry
 25 Lawrence’s death and that Plaintiff Lawrence conveyed an interest in the coin to
 26 Plaintiff McConnell. Plaintiffs seek a declaration, pursuant to 28 U.S.C. Section 2201,
 27 “that [Plaintiffs] have a superior claim of title to the aluminum cent” over the U.S.

28

1 Government. *Id.* ¶ 65.

2 Accepting Plaintiffs' factual allegations as true, it is plausible that a Mint official,
3 with proper authority and in an authorized manner, allowed Harry Lawrence to keep the
4 1974-D aluminum cent. Drawing reasonable inferences, it is plausible that Harry
5 Lawrence lawfully obtained possession of the aluminum cent, giving Plaintiffs superior
6 claim of title to the aluminum cent. The Court concludes that the facts alleged may
7 plausibly give rise to an entitlement to relief.

8 **IV. Conclusion**

9 IT IS HEREBY ORDERED that the Motion to Dismiss FAC is DENIED.
10 (ECF No. 19).

11 DATED: March 26, 2015

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13 **WILLIAM Q. HAYES**
14 United States District Judge
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